

STATE OF MICHIGAN
IN THE SUPREME COURT

LAPEER COUNTY CLERK,

Plaintiff,

Supreme Court Docket
No. 121400

v

LAPEER CIRCUIT COURT,

Defendant,

and

COUNTY OF LAPEER,

Intervening Defendant.

_____ /

**LAPEER COUNTY'S BRIEF IN SUPPORT OF
ANSWER TO PLAINTIFF'S COMPLAINT FOR
WRIT OF SUPERINTENDING CONTROL**

LANGE & CHOLACK, P.C.
Craig W. Lange (P27200)
Eric W. Cholack (P43901)
Barbara F. Doolittle (P41146)
Tara R. Schemansky (P61996)
Attorneys for Intervening Defendant
314 Town Center Drive
Troy, Michigan 48084
(248) 619-2500

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	ii
COUNTER-STATEMENT OF QUESTIONS PRESENTED.....	vi
COUNTER-STATEMENT OF FACTS	1
ARGUMENT	3
I. LOCAL ADMINISTRATIVE ORDER 2000-01 DOES NOT VIOLATE ANY “CLEAR LEGAL DUTY” OWED TO THE COUNTY CLERK.....	3
A. The Michigan Constitution Provides No “Clear Legal Duty” Owed To The County Clerk.....	3
B. Neither MCL 600.571 Nor MCR 600.1007 Manifest A “Clear Legal Duty” Owed To The County Clerk.....	4
C. Neither MCR 8.105 nor MCR 8.119 Establishes Any “Clear Legal Duties” That Are Violated By The Provisions of Administrative Order 2000-01.....	8
D. Judicial Policy Dictates The Denial Of Plaintiff’s Request.....	13
II. THE NATURE OF THE COUNTY CLERK’S DUTIES WHICH MAY BE INFERRED BY ARTICLE 6, SECTION 14 OF THE MICHIGAN CONSTITUTION ARE THOSE WHICH THE JUDICIARY REQUIRES OF THE CLERK IN PROVIDING FOR THE OPERATION OF THE COURT.....	16
III. THE LEGISLATURE DOES NOT HAVE THE CONSTITUTIONAL AUTHORITY TO SPECIFY DUTIES OF THE CLERK OF THE CIRCUIT COURT, UNDER ARTICLE 3, SECTION 2 OF THE 1963 CONSTITUTION.....	22
A. The Framers of Michigan’s Constitution Intended the Judicial Branch Have the Authority to Specify the Duties of the Clerk of the Circuit Court.....	24
B. The Authority of the Judicial Branch to Specify the Duties of the Clerk of the Circuit Court Comes Within its Inherent Powers of Administration.....	27
CONCLUSION.....	32

INDEX OF AUTHORITIES

Cases

Federal

<u>Township of Pine Grove v Talcott,</u> 86 US 666 (1873).....	26
-------------------------------------------------------------------	----

State

Michigan

<u>Cahalan v Wayne County Board of Commissioners,</u> 93 Mich App 114; 286 NW2d 62 (1979).....	19
<u>Duncan v Wayne County,</u> 316 Mich 513; 25 NW2d 605 (1947)	16
<u>Frederick v Presque Isle County Circuit Judge,</u> 439 Mich 1; 476 NW2d 142 (1991).....	3
<u>Gray v Clerk of Common Pleas Court,</u> 366 Mich 588; 115 NW2d 411 (1962).....	29
<u>In the Matter of Head Notes to Opinions,</u> 43 Mich 641, 642-43; 8 NW 552 (1881)	21
<u>Judges for the Third Judicial Circuit v County of Wayne,</u> 383 Mich 10; 172 NW2d 436 (1969).....	14, 17, 19
<u>Judicial Attorneys' Ass'n v State of Michigan,</u> 459 Mich 291; 586 NW2d 894, (1998).....	17, 21, 28, 29
<u>People v Brown,</u> 238 Mich 298; 212 NW 968 (1927)	17, 28
<u>People v Colleton,</u> 59 Mich 573; 26 NW 771 (1886).....	16
<u>People v Harding,</u> 53 Mich 481; 19 NW 155 (1884).....	25
<u>Persichini v William Beaumont Hospital,</u> 238 Mich App 626; 607 NW2d 100 (2000).....	28

<u>Police Officers Ass'n of Michigan v Oakland County,</u> 135 Mich App 414; 354 NW2d 367 (1984).....	20
<u>Sabbe v Wayne County,</u> 332 Mich 501; 33 NW2d 921 (1948).....	3, 16
<u>Smith v Perkins,</u> 139 Mich 463; 102 NW 971 (1905).....	7, 8, 17, 24, 26, 30, 31
<u>Soap and Detergent Ass'n v Natural Resources Comm'n,</u> 415 Mich 728; 330 NW2d 346 (1982).....	30
<u>State Bar of Michigan v Galloway,</u> 124 Mich App 271; 335 NW2d 475 (1983).....	31, 32
<u>In re: Sunshine Law, 1976 PA 267,</u> 400 Mich 660; 255 NW2d 635 (1977).....	15, 28
<u>Toms v Jeffries,</u> 237 Mich 413; 212 NW 69 (1927).....	16
<u>Wayne County Sheriff v Wayne County Board of Commissioners,</u> 148 Mich App 702; 385 NW2d 267 (1983).....	20
<u>Whallon vs. Ingham Circuit Judge,</u> 51 Mich 503; 16 NW 876 (1883).....	14, 17, 23, 26
<u>Wilson v Genesee Circuit Judge,</u> 87 Mich 493; 49 NW 869 (1891).....	16
 Other States	
<u>Crooks v Maynard,</u> 732 P2d 281 (Idaho 1987).....	27
<u>Rutledge v Workman,</u> 332 SE2d 831 (W Va 1985).....	27
 Constitution	
Const 1835 art 6, §5	22, 23, 25
Const 1835, art 7, § 4.....	23
Const 1850, art 6, § 10	20
Const 1850, art 6, § 12.....	23

Const 1850, art 10, § 3	23
Const 1908, art 7, § 11	23
Const 1908, art 8, § 3	23, 26
Const 1963, art 3, § 2	27, 30, 31, 33
Const 1963, art 6 § 3	27
Const 1963, art 6 § 5	27
Const 1963, art 6, § 14	3, 16, 18, 22, 24, 25, 26, 33
Const 1963, art 6, § 1	19
Const 1963, art 7, § 4	16, 24, 26

Statutes

1996 PA 374	28
MCL 421.31	31
MCL 600.571	4, 6, 7, 8, 24, 29, 31, 33
MCL 600.571(b)	5
MCL 600.571(d)	5
MCL 600.571(e)	6
MCL 600.571(f)	6, 7
MCL 600.1001	1
MCL 600.1007	4, 7, 8

Court Rules

MCR 2.119(E)	10, 11
MCR 8.103(1)	15
MCR 8.105	8, 12

MCR 8.105(B)	8
MCR 8.105(C)	9
MCR 8.110.....	12
MCR 8.110(C)(3)(b)	9
MCR 8.110(C)(3)(c)	9
MCR 8.110(C)(6).....	9
MCR 8.119.....	8, 9, 12
MCR 8.119(C)	9
MCR 8.119(D)	10
MCR 8.119(E).....	10
MCR 8.119(G)	11, 12

Other Authorities

David C. Steelman, National Center for State Courts - Michigan Trial Court Consolidation Demonstration Projects: 2001 Follow-Up Assessment Report, p 4-8 (2001).....	15
Metzger & Conley, Relationship of the County Clerk to the Circuit Clerk, 1981 Mich B.J. 849	25
Proceedings and Debates of the Michigan Constitutional Convention 1961-1962	26
Proceedings and Debates of the Michigan Constitutional Convention 1907-1908	24

**COUNTER-STATEMENT OF
QUESTIONS PRESENTED**

I.

WHETHER LOCAL ADMINISTRATIVE ORDER 2000-01 VIOLATES ANY CLEAR LEGAL DUTY PURPORTEDLY OWED TO THE LAPEER COUNTY CLERK ACTING AS CLERK OF THE COURT?

Plaintiff answers: "Yes."

Defendant Lapeer County answers: "No."

II.

WHETHER ANY DUTIES OF THE CLERK OF THE CIRCUIT COURT CAN BE INFERRED FROM CONST. 1963, ART. 6, § 14?

Plaintiff answers: "Yes."

Defendant Lapeer County answers: "Yes."

III.

UNDER THE SEPARATION OF POWERS PRINCIPLES OF CONST. 1963, ART. 3, § 2, DOES THE LEGISLATURE HAVE THE AUTHORITY TO SPECIFY THE DUTIES OF THE CLERK OF THE CIRCUIT COURT?

Plaintiff answers: "Yes."

Defendant Lapeer County answers: "No."

COUNTER-STATEMENT OF FACTS

On or about April 24, 2002, Plaintiff Marlene Bruns, in her capacity as County Clerk of Lapeer County Circuit Court ("Plaintiff") filed a Complaint for Writ of Superintending Control ("Complaint") as an original action in this Court. Defendant in this action is the Lapeer County Circuit Court (Circuit Court) and Intervening Defendant is Lapeer County ("County"). The Complaint, in essence, states that the judges of the Lapeer Circuit Court, by the adoption and implementation of Local Administrative Order 2000-01 (Exhibit A), precluded Plaintiff from performing her duties as required by law.

Subsequent to the creation of the Family Division of the Circuit Court pursuant to MCL 600.1001, et. seq. on January 1, 1998, the Lapeer County Circuit Court created a plan for its new family division. This plan was set forth in Administrative Order 1997-1 and included a Mission Statement, Organizational Chart, Plan Requirements and Plan Guidelines. The plan was approved by the State Court Administrator's Office on September 22, 1998 as Local Administrative Order 1998-01.

A successor Administrative Order (1999-02) replaced the 1998 Order. On or about February 2, 2000, Local Administrative Order 2000-01 was created (Exhibit A). This Order superceded previous orders and, in part, addressed the function and role of the County Clerk in the operation of the Family Division. Local Administrative Order 2000-01 states in pertinent part:

1. The County Clerk will continue to accept pleadings, maintain files and complete entries into the Court's data system in all domestic cases and PPOs and shall be responsible for the care and maintenance of those records.
2. The Family Court staff will continue to accept filings, maintain files, prepare orders and complete entries into the

Court's data system in all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings and shall be responsible for the care and maintenance of those records.

3. The Family Court staff will be responsible for scheduling all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings. In addition the Family Court staff will be responsible for making referrals, scheduling hearings, preparation of orders and arranging pre-trials and trials in domestic cases. The Family Court staff will make appropriate entries into the Court's data systems of these proceedings.
4. The County Clerk staff will continue to manage the motion day dockets, no-progress docket and non-service dismissals in domestic cases. The County Clerk staff will continue to attend the domestic motion docket sessions of the Family Court and make appropriate entries into the Court's data system of those proceedings.
5. The Family Court staff shall continue to be responsible for all filing fees, receipts, disbursements and accountings for support payments, restitution, administrative and program fees, and child care funds received in juvenile cases, child protective proceedings, name changes, adoptions and ancillary proceedings. The County Clerk shall continue to accept all filing fees in domestic cases for the Family Court. (Exhibit A).

Plaintiff, in her Complaint for Writ of Superintending Control, alleges that Local Administrative Order 2000-01 violates the Michigan Constitution, Michigan statutory laws, as well as Court Rules promulgated by this Court in that it prevents her from performing her legally mandated duties as clerk.

ARGUMENT

I. LOCAL ADMINISTRATIVE ORDER 2000-01 DOES NOT VIOLATE ANY “CLEAR LEGAL DUTY” OWED TO THE COUNTY CLERK.

It is axiomatic that requisite to granting superintending control, the reviewing court must find that a “clear legal duty” exists which Defendant Circuit Court is failing to perform. Frederick v Presque Isle County Circuit Judge, 439 Mich 1, 15; 476 NW2d 142 (1991).¹ Plaintiff, while recognizing this principle, has nonetheless failed to apply it to the facts at bar. Upon close scrutiny, Plaintiff simply cannot sustain her claim that a “clear legal duty” exists which the Lapeer Circuit Court has failed to follow.

A. The Michigan Constitution Provides No “Clear Legal Duty” Owed To The County Clerk.

The Michigan Constitution undoubtedly provides that the county clerk shall be clerk of the circuit court for such county. However, Const 1963, art 6, § 14, does not prescribe the clerk’s duties. Rather, it states simply:

The clerk of each county organized for judicial purposes or other officer performing the duties of such office as provided in a county charter shall be clerk of the circuit court for such county.

The Constitution gives no embodiment to the privileges to be ascribed to such office. Indeed, the very term “clerk” denotes an obligation or duty of service. Its duties and functions are clearly ministerial. Sabbe v Wayne County, 332 Mich 501, 503-504; 33 NW2d 921 (1948). The Constitution provides no basis for the finding of a “clear legal duty” nor does it provide the county clerk with specific duties in the courtroom.

¹ Defendant County of Lapeer agrees with Plaintiff that the other element essential to granting superintending control is that there is no other adequate legal remedy, and concedes this issue.

B. Neither MCL 600.571 Nor MCR 600.1007 Manifest A “Clear Legal Duty” Owed To The County Clerk.

Plaintiff further bases her request for relief, in part, on the following statutes:

600.571. Circuit court clerk, duties, accounting

Sec. 571. The county clerk of each county shall

- (a) Be the clerk of the court for the county.
- (b) Attend the circuit court sessions.
- (c) Appoint in counties with more than 1 circuit judge or having more than 100,000 population but less than 1,000,000 a deputy for each judge and approved by the judge to attend the court sessions. Each deputy shall receive a salary of at least \$6,500.00.
- (d) On the first day of each court term render an accounting to the court of all funds, stocks or securities deposited with the court clerk pursuant to court order.
- (e) Within 10 days after the beginning of each court term pay over to the county treasurer all fees belonging to the county received during the preceding court term together with an accounting thereof.
- (f) Have the care and custody of all the records, seals, books and papers pertaining to the office of the clerk of such court, and filed or deposited therein, and shall provide such books for entering the proceedings in said court, as the judge thereof shall direct.
- (g) Perform such duties as may be prescribed by court rule. Whenever in any statute of this state, the designation “register in chancery” occurs, it shall be deemed to apply to the clerk of the circuit court. MCL 600.571.

600.1007. Clerk of the court, county clerk.

Sec. 1007. As with circuit court, the county clerk is the clerk of the court for the family division of the circuit court. MCL 600.1007.

Setting aside the issue of the constitutionality of MCL 600.571 (See Argument III, *infra*), perusal of this statutory provision finds no support for Plaintiff's claim that it "clearly establishes the county clerk's circuit court duties" which have been violated by Defendant Circuit Court's Administrative Order. (Plaintiff's Brief at p. 5).

MCL 600.571(b) states simply that the clerk shall "[a]ttend the circuit court sessions." No provision of the Defendant Circuit Court's Administrative Order under scrutiny prevents or precludes the clerk from attending such sessions. In fact, the clerk may attend at her discretion. (See Affidavit of Chief Judge Holowka, Paragraph 9, attached to Defendant Lapeer Circuit Court's Answer). Thus, even assuming that MCL 600.571(b) established a "clear legal duty," Local Administrative Order 2000-01 does not prevent the County Clerk from fulfilling that duty. Plaintiff's Brief recognizes this fact, "[t]his practice is not specifically addressed by the circuit court's Administrative Order. . . ." (Plaintiff's Brief at 6). MCL 600.571(b) has simply not been violated by the Administrative Order at issue.

Plaintiff further suggests that the Administrative Order precludes her performance of MCL 600.571(d), which requires "an accounting to the court of all funds, stocks or securities deposited with the court clerk pursuant to court order." Plaintiff claims that certain provisions of the Administrative Order decrease her responsibilities in these areas as it relates to juvenile matters (See Attachment 1, Paragraph 5 to Plaintiff's Affidavit [Exhibit A to Plaintiff's Complaint]).

Plaintiff's reading of MCL 600.571(d) is selective, however. The provision obligates the clerk to provide an accounting to the court of funds "deposited with the court clerk pursuant to court order." (emphasis added). The obvious import of this provision is

that it is the circuit court which determines what funds will be deposited with the county clerk, not vice-versa. Thus, there is no “clear legal duty” here which the Administrative Order violates.

Likewise, Plaintiff’s claim that MCL 600.571(e) is violated by Administrative Order 2000-01 falls flat upon review. The Order does not prevent the County Clerk from paying to the county fees which it has collected on behalf of the court nor to perform a proper accounting. MCL 600.571(e) establishes no cognizable duty which the circuit court must perform as it relates to the county clerk. In fact, the responsibility of Family Court staff for collecting certain fees which are then deposited with the county clerk in no way limits the County Clerk’s accounting responsibilities in MCL 600.571(e). Nothing in MCL 600.571 dictates that the circuit court must permit the county clerk to receive all fees or funds deposited with the circuit court.

Similarly, there is nothing in MCL 600.571(f) manifesting some unmet “clear legal duty” flowing from the circuit court to the county clerk. The county clerk is to have “care and custody” of records, etc. “pertaining to the office of the clerk of such court. . . .” Plaintiff must contend under her theory that this provision mandates that she be the sole depository of all circuit court records. The provision, however, does not say what Plaintiff claims it says. Rather, her custody extends only to those records “pertaining” to her office. Plaintiff’s argument assumes, without statutory or case law support, that the circuit court is devoid of power to place responsibility for aspects of its record-keeping in the hands of others. Thus, Plaintiff’s reading of MCL 600.571(f) would preclude the circuit court from permitting its employees, rather than the county clerk’s employees, from even making entries into the court’s data system. (Plaintiff’s Brief at 9-10). Claims by the County Clerk

that she must be the sole depository for all circuit court records are simply without support in the statute and provide no basis for a Writ of Superintending Control.

MCL 600.571(f) also contains six very important words which Plaintiff does not address in her brief, namely, “as the judge thereof shall direct.” These six operative words again buttress the simple truth that the circuit judge is responsible for the administration of justice and the affairs of his or her court. These operative words manifest the circuit court’s discretion in administering the functions and affairs of the courtroom and those other matters falling within the circuit court’s jurisdiction. The duties assigned to the court clerk are those given to the office by the wise discretion of the circuit court, not by means of state statute.

As MCL 600.571 creates no “clear legal duty,” a similar conclusion is obviously necessitated as it relates to MCL 600.1007 which provides, generally, that:

As with circuit court, the county clerk is the clerk of the court
for the family division of the circuit court.

Nothing contained in this statutory provision provides any specific statement of duties the county clerk must be permitted to perform in such a role for the Family Division of the circuit court.

That these types of generalized statutes do not create clear legal duties flowing from circuit court to county clerk and thus do not dictate the duties of the county clerk in relation to the circuit courts was recognized as early as 1905 by this Court in Smith v Perkins, 139 Mich 463; 102 NW2d 971 (1905).

The Smith Court ruled that the clerk of the circuit court may not object to an order by the circuit court to accept a filing of a certificate of deposit in lieu of a bond as security for costs. The pertinent constitutional provision (from Michigan Constitution 1850) and statute

governing the clerk interpreted by the Smith Court are substantially similar to those in place today. The Smith court ruled as follows:

The county clerk is a constitutional officer. [1850], §12, art. 6) [sic] and is by that section made the clerk of the circuit court of such county. Section 221, Comp. Laws, requires him to attend every term of court; gives him the care of all the records, seals, books, and papers pertaining to the office of the clerk of such court, and filed or deposited therein. Neither the Constitution nor the statute prescribes his duties. He is therefore subject to all the legitimate orders of the court of which he is clerk. id. at 464 (emphasis added).

This analysis is equally applicable today and requires the conclusion that specific duties are not established by either MCL 600.571 or MCL 600.1007 and that neither section mandates the issuance of the extraordinary writ sought by Plaintiff in this case.

C. Neither MCR 8.105 nor MCR 8.119 Establishes Any “Clear Legal Duties” That Are Violated By The Provisions of Administrative Order 2000-01.

Plaintiff’s claim that Local Administrative Order 2001-01 fails to assign certain duties to her as required by Court Rule continues to rely, in large part, on MCR 8.105 as it existed prior to its amendment effective November, 1999, and not its current form.

MCR 8.105, as amended, provides the following:

- (B) Court Records and Reporting Duties.** The clerk of every circuit court shall maintain court records and make reports as prescribed by MCR 8.119. (emphasis added).
- (C) Notice of Judgments, Orders, and Opinions.** Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by the court clerk to the attorneys of record in the case, in the manner provided in MCR 2.107.

Other than directing readers to refer to MCR 8.119 for enumeration of records to be maintained by and reports to be made by the clerk of the circuit court, MCR 8.105(B)

provides no clear legal duty owed by the circuit court to the county clerk. Further, nothing in Administrative Order No. 2000-01 precludes the County Clerk from providing the notices set forth in MCR 8.105(C). Even though Paragraph 2 of Administrative Order No. 2000-01 states that “Family Court staff will . . . prepare orders . . .” the County Clerk is still able to prepare notices of such orders to be given to attorneys of record.

Similarly, MCR 8.119 provides no clear legal duty owed by the circuit court to the county clerk. MCR 8.119(C) states, in pertinent part, that “the clerk of the court shall endorse on the first page of every document the date on which it is filed . . .” Plaintiff claims to have no knowledge whether or not such endorsements are being made in certain Family Division cases “because she does not receive them.” (Plaintiff’s Brief in Support of Complaint for Superintending Control at 13). However, MCR 8.119(C) does not mandate that the county clerk “receive” all documents that are filed with the circuit court. Rather, the logical interpretation of Section (C) is that whatever pleadings are filed with the clerk’s office will be endorsed on the first page with the date of filing. Local Administrative Order No. 2000-01 does not preclude the County Clerk from making such endorsements. Just because the county clerk is to endorse some documents with the date filed does not preclude the chief circuit court judge from exercising his power and control over all court personnel to “coordinate and determine the number of . . . court personnel required to be present at any one time to perform necessary judicial and administrative work of the court, and require their presence to perform that work” MCR 8.110(C)(3)(c); to “direct the apportionment and assignment of the business of the court . . .” MCR 8.110(C)(3)(b); and to “delegate administrative duties to a trial court administrator or others.” MCR 8.110(C)(6). MCR 8.119(C) gives no exclusive right to the county clerk to receive filings for circuit court. The

circuit court therefore has breached no clear legal duty owed to the court clerk through Local Administrative Order 2000-01.

MCR 8.119(D) disposes completely of Plaintiff's apparent claim that only she is entitled to accept and maintain all pleadings and prepare all orders within the jurisdiction of the Family Division to the exclusion of all others, whether it be the Circuit Judge or an employee of that court. MCR 8.119(D) provides:

(D) Records Kept by the clerk. The clerk of the court of every trial court shall keep records in the form and style the court prescribes and in accordance with Michigan Supreme court records standards and local court plans. A court may adopt a computerized, microfilm, or word-processing system for maintaining records that substantially complies with this subrule. (emphasis added).

Significantly, MCR 8.119(D) recognizes that the clerk's role as record keeper is subject to, among other things, "local court plans." Yet, it is a local court plan embodied in a series of Administrative Orders approved by the State Court Administrative Office that Plaintiff seeks to overturn in this very case.

MCR 8.119(E) likewise is devoid of any clear legal duty owed by the circuit court judges to the county clerk. MCR 2.119(E) merely states:

(E) Access to Records. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court. (emphasis added).

Rather than mandating that the county clerk have exclusive custody and control of all circuit court documents and records, as Plaintiff argues, MCR 2.119(E) clearly provides that the court may order removal of such records from the county clerk's office. This is exactly what Local Administrative Order 2000-01 has done.

Plaintiff relies upon Subsection 1 of MCR 2.119(E), which merely addresses the inspection and copying of pleadings and other papers in the county clerk's office:

- (1) Unless access to a file, a document, or information contained in a file or a document is restricted by statute, court rule, or an order entered pursuant to subrule (F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (E)(2) and (E)(3).

The logical interpretation of this subsection is that whatever pleadings or court papers are located in the county clerk's office may be inspected by any person unless such inspection is otherwise restricted. This subsection does not direct what documents are to be located in the county clerk's office and therefore cannot impose a clear legal duty owed by the circuit court judges to the county clerk. Further, Local Administrative Order 2000-01 imposes no impairments on the inspection of documents located in the County Clerk's office.

Finally, MCR 8.119(G) addresses the reporting duties of the county clerk in the role as clerk of the circuit court:

(G) Reporting Duties.

- (1) The clerk of every court shall submit reports and records as required by statute and court rule.
- (2) The clerk of every court shall submit reports or provide records as required by the State Court Administrative Office, without costs.

Nothing in Local Administrative Order 2000-01 prevents the County Clerk from submitting such reports or records. In fact, the submission of such reports or records is never mentioned in Local Administrative Order 2000-01. Arguably, most such reports could be generated from information entered in the circuit court's data system. Other

information not contained in that data system could easily be supplied to the County Clerk by Family Court staff upon her request. There simply is no language in MCR 8.119(G) which supports Plaintiff's allegations that she must be the sole record-keeper for the Family Court Division.

Finally, the language of MCR 8.110 must be taken into account when evaluating Plaintiff's allegations that MCR 8.105 and 8.119 provide evidence of a clear legal duty owed by the Circuit Court to her with respect to internal court matters, assignment of personnel, and matters impacting the finances of the court. In pertinent part MCR 8.110 provides:

RULE 8.110 CHIEF JUDGE RULE

(A) Applicability. This rules applies to all trial courts:
i.e., the judicial circuits of the circuit court, . . .

...

(C) Duties and Powers of Chief Judge.

(1) A chief judge shall act in conformity with the Michigan Court Rules, administrative orders of the Supreme Court, and local court rules, . . .

(2) As the presiding officer of the court, a chief judge shall:

...

(c) initiate policies concerning the court's internal operations and its position on external matters affecting the court;

...

(3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:

...

(b) direct the apportionment and assignment of the business of the court, subject to the provisions of MCR 8.111;

(c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial and administrative work of the court, and require their presence to perform that work;

(d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any;

...

(f) supervise court finances, including financial planning, the preparation and presentation of budgets, and financial reporting;

...

(i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule.

...

(6) A chief judge may delegate administrative duties to a trial court administrator or others.

Clearly, the Chief Judge Rule provides for the chief judge, not the county clerk acting as the court clerk, to administer the affairs of the circuit court. The impact of the Chief Judge Rule is to ensure that the circuit courts run efficiently -- that is exactly what Local Administrative Order 2000-01 does.

The absence of any clear legal duty owed by the circuit court to the county clerk must defeat Plaintiff's request for the issuance of the extraordinary writ of superintending control.

D. Judicial Policy Dictates The Denial Of Plaintiff's Request.

Plaintiff contends that the Lapeer Circuit Court, through Local Administrative Order 2000-01, failed to fulfill its clear legal duty by usurping the County Clerk's duties as established by the Constitution, Statute and Court Rule. This contention widely misses the

mark. Administrative Order 2000-01 does not usurp the County Clerk's duties. Unquestionably, her responsibilities continue to a substantive extent. The Administrative Order mandates:

- The County Clerk will continue to accept pleadings, maintain files and complete entries into the Court's data system in all domestic cases and PPOs and shall be responsible for the care and maintenance of those records.
- The County Clerk staff will continue to manage the motion day dockets, no-progress dockets and non-source docket in domestic cases. The County clerk staff will continue to attend the domestic motion docket sessions of the Family Court and make appropriate entries into the Court's data system of those proceedings.
- The County Clerk shall continue to accept all filing fees in domestic cases for the Family Court.

It is both this Court and the circuit courts that are constitutionally empowered and responsible for assessing and declaring the needs of the judiciary and the administration of justice on the local level. Judges for the Third Judicial Circuit v County of Wayne, 383 Mich 10, 22; 172 NW2d 436 (1969), 386 Mich 1; 190 NW2d 228 (1971) (on rehearing), cert. denied 405 US 923; 92 S Ct 961; 30 L Ed 2d 794 (1972).

The clerk of the court serves a ministerial role in assisting the court in accomplishing the court's Constitutional responsibilities. The clerk is subject to the direction of the circuit judge in all matters pertaining to the administration of justice. Whallon v Ingham Circuit Judge, 51 Mich 503; 16 NW 876 (1883).

The creation of the Family Division of the circuit court and the implementation of Local Administrative Order 2000-01 have had as their purpose the improvement of efficiencies in the administration of justice. Although circuit courts and county funding units feel the fiscal tension that may exist between them, in this case, Lapeer County

appreciates both the fiscal and judicial efficiencies sought by Defendant Circuit Court by means of its Administrative Order. Plaintiff's position in this case threatens such efficiencies, both judicially and fiscally.

Effectuation of future court reform² and future judicial and fiscal efficiencies require close scrutiny of claims such as Plaintiff raises herein. Such claims seek to limit the authority of the judiciary to effectuate positive change.

Rule making, supervisory, and other administrative powers are vested exclusively in the judiciary and this Court by the Constitution. In re Sunshine Law, 1976 PA 267, 400 Mich 660; 255 NW2d 635 (1977). Plaintiff seeks to interfere with the exercise of that power. Nothing within the Constitution permits such intervention in the court's exercise of its powers. No legislation divests the circuit court of its authority to administrate its affairs. Administrative Order 2000-01 was approved by this Court's administrative arm, the State Court Administrative Office, which is authorized, under this Court's supervision and direction, to "supervise and examine the administrative methods and systems employed in the offices of the courts, including the offices of the clerks and other officers. . . ." MCR 8.103(1)(emphasis added). Accordingly, Administrative Order 2000-01 does not violate any "clear legal duty" and, for reasons lying at the core of this Court's authority, the writ of superintending control sought by Plaintiff should be denied.

² See, e.g., David C. Steelman, National Center for State Courts – *Michigan Trial Court Consolidation Demonstration Projects: 2001 Follow-up Assessment Report*, p 4-8 (2001).

II. THE NATURE OF THE COUNTY CLERK'S DUTIES WHICH MAY BE INFERRED BY ARTICLE 6, SECTION 14 OF THE MICHIGAN CONSTITUTION ARE THOSE WHICH THE JUDICIARY REQUIRES OF THE CLERK IN PROVIDING FOR THE OPERATION OF THE COURT.

The county clerk undoubtedly wears two different hats from Michigan's constitutional wardrobe – one in a local government role (Article 7, Section 4), and one in a judicial branch role (Article 6, Section 14). In performing local government responsibilities, Article 7, Section 4 cloaks the county clerk with “duties and powers” as “provided by law.” Article 6, Section 14, however, makes no reference to the duties to be performed by a county clerk performing judicial branch responsibilities. Article 6, Section 14 simply states that the county clerk, or other officer performing the duties of such office as provided in a county charter, “shall be clerk of the circuit court for such county.” This begs the question of what duties, if any, are constitutionally required of the county clerk when serving as “clerk of the circuit court.”

The absence of any expression of the county clerk's judicial duties speaks volumes in support of the Court's role to establish the duties of a county clerk within the county circuit court system. It is consistent with this Court's precedent prior to the adoption of Michigan's current Constitution that a county clerk working in the courts performs ministerial recordkeeping functions as directed by the court.

The clerk's ministerial role for the court was widely accepted prior to 1963. *See Sabbe v Wayne County*, *supra*, *Duncan v Wayne County*, 316 Mich 513; 25 NW2d 605 (1947), *Toms v Jeffries*, 237 Mich 413; 212 NW 69 (1927), *People v Colleton*, 59 Mich 573; 26 NW 771 (1886), and *Wilson v Genesee Circuit Judge*, 87 Mich 493; 49 NW 869 (1891). In performing ministerial functions, the clerk has been and is subject to the court's direction. The clerk is an officer “of the court and subject to its direction in all things necessary to a

proper administration of the law during its sessions.” Whallon, supra at 508. The clerk is “subject to all legitimate orders of the court of which he is clerk,” Smith, supra at 464. These cases reflect the clear principle that no specific duties may be inferred from Article 6, Section 14. Rather, duties which may be inferred are only those which the judiciary requires of the clerk in providing for the operation of the court. To that end, it is illogical for Plaintiff to claim that the Court has removed “clear legal duties” from the clerk when it is the court itself that determines what duties the clerk will perform.

In order for a circuit court to exercise its “inherent right to function and to function effectively,” People v Brown, 238 Mich 298; 212 NW 968 (1927), it must have flexibility in directing how the county clerk interacts with the court’s case flow and records. How the court shapes the clerk’s role may be critical in determining how smoothly, efficiently and effectively the court is able to function.

The responsibility and authority for enforcing this flexibility ultimately falls upon this Court. While the day-to-day operations of state trial courts are in the hands of the chief judges of each court, “[u]nder Article 6, Section 4 of the state constitution, the Michigan Supreme Court has general supervisory control of the courts and is responsible for the efficient and effective operation of all courts within the state court system.” Judicial Attorneys’ Ass’n v State of Michigan, 459 Mich 291, 298; 586 NW2d 894, 897 (1998). This Court, charged “with the preclusive responsibility for efficient all-over-the-state judicial service, receives and accepts with that responsibility the inherent power and duty to take such action as is reasonably necessary to fulfill the constitutional obligation thus undertaken.” Judges for the Third Circuit, supra at 33. Clearly, the ability of lower courts to

seek greater operational efficiency and efficacy by fine-tuning their procedures rests with the prudent supervision of this Court.

How then does this Court honor the constitutional obligation to foster judicial efficacy and efficiency as well as the constitutional directive in Article 6, Section 14 that the county clerk “shall be clerk of the circuit court?” Without question, the drafters of Article 6, Section 14 specified that the county clerk has a role to play in the circuit court. The county clerk must “be” the clerk of the circuit court. However, the precise contours of that role as clerk must necessarily be defined by each circuit court, in the interest of achieving efficient and effective operations and subject always to this Court’s careful oversight.

The relationship between each circuit court and its corresponding county clerk’s office is by nature unique and evolving, as new judges, clerks and personnel rotate through these organizations. Some circuits will enjoy a very close and cohesive relationship. Others will have their own challenges and idiosyncrasies that stand in the way of improved operations. Whether these challenges involve physical space, personnel, tradition, fear of change, lack of communication or other limitations, no two situations will be the same. Therefore, if improved court operation is to be a serious goal, each circuit court must individually address its own unique circumstances. Although always under the watchful eye of this Court, each circuit court must have sufficient autonomy and discretion to manage its court-clerk relationship in a way that will optimize court performance without eliminating the clerk’s constitutional role. The critical question to be answered is how this Court can ensure that a proper balance is achieved.

The complexities in balancing the court-clerk relationship are similar to those that arise in balancing relationships between other public officials in different levels or branches

of government. In such relationships, there are common objectives of efficient service to the public. However, there are also potential clashes between high-level elected officials who have autonomy within their own realm but must also work through or with other equally autonomous elected officials. Where clashes have resulted in allegations of infringement on or interference with the role of a public officer/body, this Court can look to past decisions for guidance.

In Judges for the Third Circuit, supra, the county had refused to fund additional administrative personnel for the circuit court, despite an urgent need. This Court determined that the court must function “serviceably” and therefore required the county to appropriate funding.

[T]he constitutionally assigned duty of a court such as ours automatically carries with it the power and responsibility of making continually sure that this ‘one court of justice’ (Const. 1963, art. 6, § 1) functions serviceably as a co-equal branch of Michigan’s government. . . . Judges for the Third Circuit, supra at 33.

This same “serviceability” standard has also been applied to county executive officers in determining whether they have been adequately funded by their counties. Constitutional county executive officers such as the clerk, treasurer, prosecutor and register of deeds must be funded at a “serviceable” level.

A serviceable level of funding is the minimum budgetary appropriation at which statutorily mandated functions can be fulfilled. A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute. Cahalan v Wayne County Board of Commissioners, 93 Mich App 114, 124; 286 NW2d 62, 67 (1979).

In assessing and providing for serviceability, county boards of commissioners may not abuse their discretion or act in an arbitrary or capricious manner. See Wayne County Sheriff v Wayne County Board of Commissioners, 148 Mich App 702, 704-5; 385 NW2d 267, 269 (1983); Police Officers Ass'n of Michigan v Oakland County, 135 Mich App 414, 430-32; 354 NW2d 367, 369-70 (1984).

These same concepts can be adapted to fit the question at hand. As long as the county clerk is able to function “serviceably,” there is no infringement upon her office. The duties inferred by the constitutional status as “clerk of the circuit court” are those that permit the clerk to continue to function at a serviceable level. A circuit court has, however, the discretion to tailor the clerk’s functions and duties to meet the unique parameters of the court-clerk relationship and circumstances at hand. At the same time, the principles applicable in the above-noted infringement cases would apply equally to the circuit court: it cannot abuse its discretion, act arbitrarily or capriciously, or reduce the clerk’s level of activity to such an extent that it effectively eliminates the existence of the clerk’s ministerial functions.

This Court has used a similar approach once before in examining the role of a constitutional officer working with the judiciary. Article 6, Section 10 of the 1850 Constitution gave the Supreme Court the power to appoint a Supreme Court reporter. Like the current constitutional language about the clerk of the circuit court, no duties were specified for the reporter. When the legislature passed an act to require Supreme Court justices to prepare and file a syllabus for each opinion, this would have removed a substantial portion of the reporter’s duties and transferred it to the Supreme Court. This court concluded that the act was unconstitutional since it could lead to the abolishment of

the Supreme Court reporter position, a Constitutional office. However, the court recognized that the position could be subject to modification:

That the duties pertaining to that office may be defined, enlarged or diminished by the legislative department, in many respects, we do not question, but the essential duties cannot be taken away, as this in effect would result in the abolishment of the office. . . . In the Matter of Head Notes to Opinions, 43 Mich 641, 642-43; 8 NW 552 (1881).³

Whether a court has impermissibly abused its discretion, acted arbitrarily or capriciously, or threatened the very existence of the county clerk as clerk of the circuit court is a question of fact that must be decided on a case-by-case basis. In the instant case, the Lapeer Circuit Court has done none of the above.

The Chief Judge in this case has not eliminated the county clerk's role as clerk of the court or threatened the existence of such role. The county clerk continues to perform the functions previously performed in the civil and criminal areas of the court's jurisdiction. In the family area, the county clerk continues to accept pleadings and filing fees, maintain files and complete entries into the court's data system in all domestic cases and PPOs, with responsibility for care and maintenance of such records. The county clerk continues to be responsible for managing motion day dockets, no-progress dockets and the non-source docket. This is hardly an abolishment of the county clerk's role.

In fact, it is only certain functions in the circuit court's family division — largely tasks in juvenile - or child - related matters which were previously performed in the former probate court and likely never performed by the county clerk to begin with—that have not been assigned to the county clerk. The Chief Judge has sought to process certain family

³ This case dealt less with the operation of the court itself than with how the results of that operation were presented to the public. Perhaps for this reason, the Head Notes court chose not to raise a separation of powers issue. In any event, this Court has since greatly sharpened the principles prohibiting legislative interference with the judicial branch. See, Judicial Attorneys Association, *supra*.

division work using former probate court staff—those with prior experience and familiarity handling clerical functions related to juvenile proceedings in the former probate court. (See Exhibit B, Holowka, March 15, 2000 Affidavit, Paragraph 5.) Far from being an “abuse of discretion”, this is an entirely understandable use of judicial personnel. Furthermore, the Chief Judge has used certain staff to permit a timely and more accurate entry of information into the court’s information system and to compensate for the fact that the County Clerk’s office has staffing and storage space problems that affect the County Clerk’s ability to perform circuit court functions. (See Exhibit B, Holowka, March 15, 2000 Affidavit, Paragraph 6; and June 30, 2002 Affidavit of Chief Judge Holowka, Paragraph 5, attached as Exhibit 2 to Defendant Lapeer Circuit Court’s Answer). This can hardly be considered an arbitrary or capricious managerial decision.

In order to strive for optimal efficacy and efficiency, it is critical that this Court preserve the flexibility and discretion of circuit courts to manage the necessary interaction between court, clerk and records. Since the Lapeer Circuit Court has done this responsibly, in a manner that does not infringe upon the constitutional role of the county clerk, its actions must be upheld.

III. THE LEGISLATURE DOES NOT HAVE THE CONSTITUTIONAL AUTHORITY TO SPECIFY DUTIES OF THE CLERK OF THE CIRCUIT COURT, UNDER ARTICLE 3, SECTION 2 OF THE 1963 CONSTITUTION.

In 1835, Michigan’s first Constitution established that the county clerk was to perform the duties of clerk of the courts in the county. Const 1835, art 6, § 5. In fact, contrary to Plaintiff’s statement that “[t]he office of County Clerk is . . . not actually created by Article 6, § 14 of the Michigan Constitution. . . . [but] under Article 7,” the first

constitution actually created the county clerk within the Judicial Article. Article 6, § 5 of the 1835 Constitution provided:

The supreme court shall appoint their clerk or clerks; and the electors of each county shall elect a clerk, to be denominated a county clerk, who shall hold his office for the term of two years, and shall perform the duties of clerk to all the courts of record to be held in each county, except the supreme court and court of probate. Const 1835, art 6, § 5.

At that time, Article 7 of the 1835 Constitution did not make mention of the county clerk. Const 1835, art 7, § 4.⁴ The subsequent Michigan Constitutions recognized the county clerk as a county officer by including it within the local government article, but maintained the clerk's dual role as clerk of the circuit court.⁵

Early case law interpreting the role of the county clerk as clerk of the circuit court held that "[county clerks] are officers of the court and subject to its direction in all things necessary to a proper administration of the law during its sessions." Whallon, supra. Then in 1905, this Court ruled that since the duties of the clerk of the circuit court were defined

⁴ Const 1835, art 7, § 4 provided:

There shall be a sheriff, a county treasurer, and one or more coroners, a register of deeds and a county surveyor, chosen by the electors in each of the several counties once in every two years, and as often as vacancies shall happen. The sheriff shall hold no other office, and shall not be capable of holding the office of sheriff longer than four in any term of six years; he may be required by law to renew his security from time to time, and in default of giving such security, his office shall be deemed vacant; but the county shall never be made responsible for the acts of the sheriff.

⁵ Const 1850, art. 6, § 12:

The clerk of each county organized for judicial purposes shall be the clerk of the circuit court of such county.

Const 1850, art 10, § 3:

In each organized county there shall be a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, chosen by the electors thereof, . . . whose duties and powers shall be prescribed by law.

Const 1908, art 7, § 11:

The clerk of each county organized for judicial purposes shall be clerk of the circuit court for such county. The judges of the circuit courts may fill any vacancy in the offices of county clerk or prosecuting attorney within their respective jurisdictions, but shall not exercise any other power of appointment to public office.

Const 1908, art 8, § 3:

There shall be elected biennially in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be prescribed by law. . . .

neither in the statutes nor the constitution, the clerk was “therefore subject to all the legitimate orders of the court of which he is clerk.” Smith, supra. Three years later, and without any considerable debate,⁶ the 1908 Michigan Constitution went into effect retaining basically the same language in both the judicial and local government articles.⁷

The historical development of the position of circuit court clerk establishes a basis for the framers’ intent in the creation of the position. The language contained within the current Michigan Constitution, Const 1963, art 6, § 14, has remained virtually unchanged since our first Constitution was enacted, nearly 170 years ago. The framers intended the clerk maintain a role within the judiciary and that such role be defined by the judiciary alone.

A. The Framers of Michigan’s Constitution Intended the Judicial Branch Have the Authority to Specify the Duties of the Clerk of the Circuit Court.

Part of Plaintiff’s argument is that MCL 600.571 is constitutional by virtue of Article 7, § 4, which provides that the county clerk’s duties shall be provided by law. Plaintiff argues that because the legislature is given the constitutional authority to prescribe the duties of the county clerk in its capacity as a county officer, the Constitution thereby gives the legislature the authority to prescribe the duties of the clerk of the circuit court. However, Plaintiff’s reasoning is flawed.

A distinct difference exists between Article 7, § 4 and Article 6, § 14. Article 6, § 14 makes no mention of the circuit court clerk’s duties being prescribed by law. Had the framers of the Michigan Constitution seen fit to have the legislature prescribe the duties of the clerk of the circuit court, it would have provided the means by which the legislature could do so. Instead, the framers provided for the clerk of the circuit court within Article 6,

⁶ Proceedings and Debates of the Michigan Constitutional Convention 1907-1908.

§ 14 of the judicial article without creating any mechanism for legislative enactments pertaining to the clerk's duties. As previously mentioned, the framers created the position of county clerk within the Judicial Article. Const 1835, art 6, § 5. It should be noted that had the framers of Michigan's Constitution intended the clerk of the circuit court's duties to be provided by law, it would have, at the time of the initial drafting included such language. The framers included the county clerk as a county officer subsequent to the creation of the county clerk within the Judicial Article, therefore, it does not follow that an argument can be made that the framers intended to have a subsequently enacted provision apply to an earlier enacted provision.

In 1884, Justice Cooley writing for a unanimous court in People v Harding, 53 Mich 481, 485-86; 19 NW 155 (1884) stated:

Every constitution has a history of its own which is likely to be more or less peculiar; and unless interpreted in the light of this history is liable to be made to express purposes which were never within the minds of the people agreeing to it. This the court must keep in mind when called upon to interpret it; for their duty is to enforce the law which the people have made, and not some other law which the words of the constitution may possibly be made to express. . . .

While it is true that the framers of the Michigan Constitution may not have anticipated, in 1835, the issues that now confront our current judicial system, their intent is still clear. Michigan's Constitution was created at a time when judges traveled across counties and a need existed to have all court records in one centralized location, it made sense to have the individual charged with this responsibility for other county business, the county clerk, also maintain these records for the court.⁸ In addition, it has been said that, in

⁸ See, Metzger & Conley, Relationship of the County Clerk to the Circuit Court, 1981 Mich. B. J. 849.

1908, being clerk of the court may have been the primary duty of the county clerk.⁹ The framers, however, maintained the distinction between the two roles, county clerk and clerk of the circuit court. The county clerk's duties, under Const 1908, art 8, § 3, were to be as provided by law; however, the county clerk's duties as they pertained to the role of clerk of the circuit court were not intended to be prescribed by law; the clerk of the circuit court was to serve at the direction of the court. See, Smith, supra; Whallon, supra.

The United States Supreme Court in Township of Pine Grove v Talcott, 86 US 666 (1873) stated:

This case as to the constitution [of Michigan] is a proper one for the application of the maxim, *Expressio unius est exclusio alterius*. The instrument is drawn with ability, care and fullness of details. If those who framed it had intended to forbid [such action], it cannot be that they would not have explicitly said so. It is not to be supposed that such a gap was left in their work from oversight or inadvertence.

So too, is the instant case proper for the application of the maxim, *Expressio unius est exclusio alterius*. If the framers of the Michigan Constitution intended for the clerk of the circuit court's duties to be provided by the legislature, it would have included the language within the Judicial Article of the Constitution. Any omissions of such a provision elsewhere in the Constitution should be clearly construed as intentional. Plaintiff however assumes, and proffers this Court also assume, that the framers intended to have the provision "shall be provided by law" of Article 7, § 4 also apply to Article 6, § 14. Such assumptions should not be made. Simply stated, if the people of the State of Michigan had so intended, they would have said so.

⁹ Proceedings and Debates of the Michigan Constitutional Convention 1961-1962 (testimony of Delegate Danhof at 1369).

Through the separation of the clerk's role in Michigan's Article 6 and Article 7, the framers recognized 1) the need for an individual in the position of court clerk and 2) that such position was necessarily going to be a dual role, separate and distinct from the clerk as an officer of the county.¹⁰

B. The Authority of the Judicial Branch to Specify the Duties of the Clerk of the Circuit Court Comes Within Its Inherent Powers of Administration.

Sections 3 and 5 of Article 6 of the Michigan Constitution vest the Supreme Court with authority over the administration of the courts and the right to make general rules establishing the practice and procedure of the courts in this state. It follows then, that a statutory provision, which purportedly vests such authority in another branch, violates Article 3, § 2. This Court has clearly stated:

The judicial powers derived from the Constitution include rule-making, supervisory and other administrative powers as well as traditional adjudicative ones. They have been exclusively entrusted to the judiciary by the Constitution and may not be diminished, exercised by, nor interfered with by

¹⁰ Several jurisdictions have recognized the specific intent of constitution framers in the placement of clerks within the judicial article. The Idaho Supreme Court reasoned that because the position of clerk (of the court) was created within the judicial article of the Idaho Constitution, the position was therefore "within the domain of and subject to the power of the judicial branch." Crooks v Maynard, 732 P2d 281 (Idaho 1987). The state legislature did not have the authority to remove such power from the judiciary. id.

The West Virginia Supreme Court held it was the intent of the framers of the judicial article governing courts that the clerk of the circuit court, although an independently elected, public official, be subject to the direction and control of the circuit court of the county in which he serves with respect to all court-related duties. Rutledge v Workman, 332 SE2d 831, 836-37 (W Va. 1985). In its discussion of the state's unitary judicial system the court stated: "[t]he Supreme Court's exclusive authority over administration, and primary responsibility for establishing rules of practice and procedure, secures businesslike management for the courts and promotes simplified and more economical judicial procedures." id. at 834. The court held that by including the court clerk within the judicial article, the framers intended to place the clerk within the administrative hierarchy of the court system. id. at 836. The court further stated:

It is entirely contrary to the centralized, hierarchical, and well organized structure of the state judiciary . . . for the circuit clerk to be a loose cannon sliding around on the county's judicial deck.

the other branches of government without constitutional authorization. In re the “Sunshine Law”, supra at 663.

The judiciary’s inherent powers are necessarily broad so that it has the ability to function effectively in performing its mission to pursue justice. In People v Brown, supra at 300, this Court held “[t]he court has the inherent right to function, and to function efficiently.” The judiciary’s inherent powers are derived from the Constitution and may not be restricted by statute. This principle was explained in Persichini v William Beaumont Hospital, 238 Mich App 626, 638-39; 607 NW2d 100 (2000):

[T]he primary source of judicial power is constitutional in origin. The judiciary possesses all the authority necessary to exercise its powers as a coordinate branch of government. The separation of powers doctrine prohibits the Legislature from encroaching on judicial functions. Thus, the court’s inherent powers, which flow from the constitution, may not be abridged or restricted by statute. (Citations omitted).

This Court has likewise recognized that statutes must not interfere with the court’s inherent power to provide for its own administration. Judicial Attorneys Ass’n, supra, provides clear constitutional guidance on the issue of legislative restriction of judicial power. Therein, the Michigan Legislature enacted 1996 PA 374, which designated the municipal funding unit as a “co-employer” of court employees, and divided personnel responsibilities between the funding unit and the court. In finding the statute unconstitutional, this Court left no question regarding its role in establishing, assessing, and overseeing judicial responsibilities in light of the separation of powers doctrine. It ruled that a long line of Michigan cases affirms “the fundamental and ultimate responsibility for all aspects of court administration, including operations and personnel matters within the trial courts, resides within the inherent authority of the judicial branch.” id. at 299. This Court continued:

The rule is well settled that under our form of government the Constitution confers on the judicial department all the authority necessary to exercise its power as a coordinate branch of the government. It is only in such a manner that the independence of the judiciary can be preserved. The courts cannot be hampered or limited in the discharge of their functions by either of the other 2 branches of government. Id. at 299-300 (quoting Gray v Clerk of Common Pleas Court, 366 Mich 588, 595; 115 NW2d 411 (1962)).

Plaintiff claims that the Legislature intended to prescribe duties of the clerk of the circuit court through its enactment of MCL 600.571.¹¹ Plaintiff seeks to excuse this unconstitutional intrusion upon the court by claiming that the statute “does not touch upon, let alone usurp, the constitutional powers or functions of the judiciary.” (Plaintiff’s Brief at 25). Rather, Plaintiff claims the statute merely “involves the administration of the court.” id. This claim is directly at odds with this Court’s pronouncement in Judicial Attorneys’ Ass’n. Judicial Attorneys Ass’n, supra at 299, emphatically underscores that it is the court, and not the legislature, that is responsible for all aspects of judicial administration. Plaintiff’s claim that this Court’s constitutional responsibilities are not touched upon or usurped because MCL 600.571 deals with matters of court administration flies in the face of this Court’s precedent.

It is imperative that a court has the autonomy, discretion, and ability to manage its operations in a way that will provide effective service to the public and achieve justice. To permit the legislature to regulate by statute the internal operations of the courts is destructive to the constitutional principles at issue here.

Plaintiff claims this argument “ignores the express language of the Constitution” and “grossly oversimplifies the doctrine of separation of powers.” Plaintiff clearly misunderstands Defendant Lapeer County’s argument. Defendant is not arguing the

¹¹ See *infra* Argument I at page 4, for text of MCL 600.571.

branches of government should be kept wholly separate. The framers intended the branches to have coordinating authority in certain expressly stated circumstances. Const 1963, art 3, § 2 states:

The powers of government are divided into three branches; legislative, executive and judicial. No person exercising the powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution. (emphasis added).

Plaintiff cites to Soap and Detergent Ass'n v Natural Resources Comm'n, 415 Mich 728; 330 NW2d 346 (1982) as providing the basis for its argument that “there will be overlap in function and control among the branches without violation of the doctrine.” (Plaintiff’s Brief at 24) (emphasis added). This Court, in the Soap decision, explains the separation of powers doctrine as it relates to the framers’ intent in maintaining a separation of the executive and legislative branches. Soap, supra at 751. This Court quoted James Madison, The Federalist No. 47, in which James Madison is explaining Montesquieu’s view of separation of powers: “[h]is meaning *** can amount to no more than this that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.” Soap, supra at 752 (quoting James Madison, The Federalist No. 47) (emphasis in original). Defendant Lapeer County does not challenge this principle, but encourages this Court to follow the intent of the framers in its interpretation of the separation of powers doctrine in relation to the judiciary’s authority to set forth the duties of the circuit court clerk.

Moreover, Plaintiff argues this Court’s holding in Smith v Perkins means that the clerk of the circuit court is only subject to the administrative power of the court in the

absence of a statute or constitutional provision. Essentially, Plaintiff argues that the judiciary's inherent powers are subverted in the presence of a statute purporting to oversee the administration of the courts. Plaintiff argues that since MCL 600.571 is now in place, as it was not when this Court decided the Smith case, the court has no authority over the clerk of the circuit court. Plaintiff's argument merely begs the question this Court has clearly instructed the parties to answer "under the separation of powers principles of Const 1963, art 3, § 2, does the legislature have the authority to specify the duties of the clerk of the circuit court?" The question is not whether the statute, MCL 600.571, governs this case, but whether the legislature had the constitutional authority to enact it.

It appears Plaintiff has misinterpreted this Court's holding in State Bar of Michigan v Galloway, 124 Mich App 271; 335 NW2d 475 (1983). In the Galloway decision, the Court of Appeals addressed the language of MCL 421.31, which provided that an employer may be represented in any proceeding before the Employment Security Commission by counsel or other duly authorized agent. One of the issues presented to the court was whether the judiciary possessed the authority to reject the statute as it related to the unauthorized practice of law. id. at 279. The plaintiff, in Galloway, argued that "the ultimate authority to define and regulate the practice of law lies in the judiciary and that legislative enactments . . . may be rejected by the judiciary." The court held that while the Court has the inherent power to regulate the qualifications of persons authorized to practice law, the Legislature may also regulate the practice of law. id. at 280. The court further explained that the authority of the Court to regulate the practice of law does not extend beyond the courts, i.e. it did not extend to "practice" before the Employment Security Commission. id. Hence, the quote provided by Plaintiff:

[W]hile the inherent power of the courts is paramount as to matters relating to the administration of judicial functions (i.e. regulation of the practice of law *in courts*), the same is not true in other areas of the practice of law. The holdings in several cases suggest that the supreme inherent power of the judiciary does not extend beyond legal practice *in the courts*. *id.* (emphasis added).

Plaintiff then states, “[t]hus, the intervenors have actually demonstrated that even in the only recognized area of the courts’ paramount inherent powers, Legislative enactments can coexist without invading judicial power.” (Plaintiff’s Brief at 28). The Court of Appeals did not hold that regulation of the practice of law was the “only recognized area of the court’s paramount inherent powers.” The court held that such inherent power, the regulation of the practice of law, does not extend beyond the practice of law within the courts. In actuality, the quote contained in Defendant Lapeer County’s previous brief, did not “distort” the court’s holding at all. In fact, Defendant Lapeer County quoted the portion most relevant to this Court’s deliberation, “the inherent power of the courts is paramount as to matters relating to the administration of judicial functions” *Galloway*, *supra* at 280.

CONCLUSION

Administrative Order 2000-01 reflects precisely the type of internal, idiosyncratic operational decisions which are best made by a chief judge, who is in the best position to assess the court’s overall needs, performance, and capabilities. Such internal management decisions are not best made by the legislature after committee hearings, bill mark-ups, intense lobbying and roll-call votes. The separation of powers doctrine recognizes this reality.

In an earnest effort to make the Lapeer County Circuit Court function as efficiently and effectively as possible, the Chief Judge, through Administrative Order 2000-01, specified certain duties, which the court clerk shall and shall not do relating to certain types of cases. The Circuit Court has not prohibited Plaintiff from acting as clerk of the court. Rather, it has simply specified the structure and nature of her duties as clerk of the court, consistent with the efficient operation of the court. Such actions are part of a court's duty and responsibility to the public. To permit the legislature to obstruct this duty is an unconstitutional interference with and encroachment on the judiciary.

Plaintiff is asking this Court to read into Article 6, § 14 of the Constitution words that are neither present, nor can be inferred. A reading of our Constitution together with the case law interpreting it leaves no doubt that the framers clearly intended for the courts to oversee the duties of the clerk of the court without interference of the legislative branch. The legislature simply does not have the constitutional authority to specify the duties of the clerk of the circuit court, nor otherwise interfere with the Court's internal administration of its affairs.

Therefore, Defendant Lapeer County requests this Honorable Court 1) dismiss Plaintiff's Complaint for Writ of Superintending Control 2) find MCL 600.571 in violation of the separation of powers provision, Article 3, § 2 and an unconstitutional intrusion on the

judicial branch, and 3) order Plaintiff to pay Defendant Lapeer County's costs and attorney fees so wrongfully incurred in defending this action.

Respectfully submitted,
LANGE & CHOLACK, P.C.

By: 

Craig W. Lange (P27200)
Eric W. Cholack (P43901)
Barbara F. Doolittle (P41146)
Tara R. Schemansky (P61996)
Attorneys for Intervening Defendant
314 Town Center Drive
Troy, Michigan 48084
(248) 619-2500

Dated: October 16, 2002

EXHIBIT
A



THE FORTIETH JUDICIAL CIRCUIT OF MICHIGAN

NICK O. HOLOWKA
Circuit Judge

Lapeer County Complex Building
255 Clay St. • Lapeer, MI 48446
(810) 667-0320
FAX (810) 667-0340

40TH JUDICIAL CIRCUIT

ADMINISTRATIVE ORDER NO 2000-01

FAMILY COURT OPERATIONS

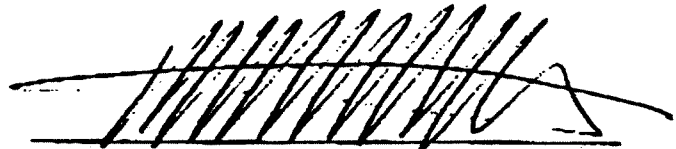
In order to implement the changes required by the legislation creating the Family Division of the Circuit Court (PA 374 and 388 of 1996), to enhance and clarify the procedures to be followed in the new Family Court, to clarify the role of the County Clerk in the operations of the Family Court, to merge the procedures previously followed in juvenile, child protective proceedings and ancillary proceedings into the Family Court, to maintain the Court's data entry system, and to adopt new procedures for efficient administration of the Family Court, the Court issues the following administrative order:

1. The County Clerk will continue to accept pleadings, maintain files and complete entries into the Court's data system in all domestic cases and PPOs and shall be responsible for the care and maintenance of those records.
2. The Family Court staff will continue to accept filings, maintain files, prepare orders and complete entries into the Court's data system in all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings and shall be responsible for the care and maintenance of those records.
3. The Family Court staff will be responsible for scheduling all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings. In addition, the Family Court staff will be responsible for making referrals, scheduling hearings, preparation of orders and arranging pre-trials and trials in domestic cases. The Family Court staff will make appropriate entries into the Court's data systems of these proceedings.
4. The County Clerk staff will continue to manage the motion day dockets, no-progress docket and non-service dismissals in domestic cases. The County Clerk staff will continue to attend the domestic motion docket sessions of the Family Court and make appropriate entries into the Court's data system of those proceedings.

5. The Family Court staff shall continue to be responsible for all filing fees, receipts, disbursements and accountings for support payments, restitution, administrative and program fees, and child care funds received in juvenile cases, child protective proceedings, name changes, adoptions and ancillary proceedings. The County Clerk shall continue to accept all filing fees in domestic cases for the Family Court.
6. Local Administrative Order 1999-02 is hereby rescinded and replaced by this order.

This order is issued pursuant to MCR 8.112 and will be effective upon approval by the State Court Administrator. The matters covered in this order will be reviewed on an ongoing basis and this order will expire on December 31, 2000, unless extended by order of the Court.

Dated: February 2, 2000



Nick O. Holowka, Chief Judge

EXHIBIT
B

STATE OF MICHIGAN
IN THE COURT OF APPEALS

In re MARLENE M. BRUNS,
in her capacity as the
Lapeer County Clerk,
and the MICHIGAN ASSOCIATION
OF COUNTY CLERKS

Court of Appeals No. 225025

Exhibit B

AFFIDAVIT SUPPORTING DEFENDANT'S ANSWER TO PLAINTIFFS'
COMPLAINT FOR A WRIT OF SUPERINTENDING CONTROL

THE HONORABLE NICK O. HOLOWKA, having been duly sworn,
deposes and says:

1. I am the Chief Judge of the Lapeer County Circuit Court.
2. As Chief Judge, I direct the administration of the Circuit Court by performing duties which include supervising caseload management and monitoring the disposition of the work of the Court; directing the apportionment and assignment of the business of the Court; coordinating and determining the number of judges and court personnel required to be present to perform the judicial and administrative work of the Circuit Court; and, supervising the performance of all court personnel.
3. The other Lapeer County judges are the Honorable Clayton E. Preisel and the Honorable Michael P. Higgins. Judge Preisel is the probate judge and presiding judge of the family division. Judge Higgins is the Chief Judge Pro Tempore of the Circuit Court and is also assigned to the family division. I handle most of the non-family division Circuit Court assignments.
4. Sometime during early 1997, I was made aware of Supreme Court Administrative Order 1997-1 which established procedures for the implementation of the Circuit Court's family division. Thereafter, in March or April 1997, I received a document from the State Court Administrative Office entitled *Family*

Division of the Circuit Court - Instructions for Completing and Filing the Implementation Plan. (Holowka Affidavit, Attachment "A"). It was my understanding at this time that all circuit and probate court judges were required by the State Court Administrator to seek the input of the County Clerk in the development of a family division implementation plan. Accordingly, I held approximately eight or nine meetings with Judges Preisel and Higgins, with the County Clerk, the Prosecutor, the Friend of the Court, the County Commissioners, and with numerous other employees of the Circuit and Probate Courts in an effort to identify the manner in which the administrative practices and procedures of the family division could be coordinated to provide effective and efficient services to families in Lapeer County, and a smooth implementation of the family division given the budget and space constraints. These meetings also included discussions about various options offered by Judges Preisel, Higgins, and myself, and by County Clerk Bruns, for addressing the duties of the County Clerk.

5. The staff that has been assigned to the family division are a combination of Circuit Court employees and employees who formerly handled clerical functions related to juvenile proceedings in the Probate Court. There is not yet a clear definition of which family division employees work for which court for the reason that the Circuit and Probate Courts are still in the process of restructuring the personnel and budgets of these Courts. In addition, this process has been complicated by continuing concerns over how existing collective bargaining agreements may be affected by reducing the level of administrative assignments made to Probate Court employees.

6. The County Clerk and her staff have never been prevented from attending any court session in the family division. It is true, however, that the County Clerk has not been ordered to perform duties related to proceedings in the family division. The decision to administer the family division without the assistance of the County Clerk and her staff was made because Judges Preisel and

Higgins already have recorders and clerks in their courtrooms who are able to perform functions during hearings and trials such as marking exhibits. The court recorders also enter information regarding proceedings into the Family Court's computer system at the time they are undertaken. This allows for a timely and more accurate entry of information into the Court's information system than would presently be possible if the County Clerk and her staff were to be responsible for this function. This is true because separate computer information systems have been employed by the Lapeer Probate and Circuit Courts. These separate information systems were in place for several years before the date upon which the Supreme Court issued Administrative Order 1997-1. Although an electronic bridge has been established between the systems, this bridge only allows a user in one information system to gain limited access to the other. This technology does not make it possible to transfer electronic records regarding juvenile and neglect cases from the Probate Court's information system into the system used by the Circuit Court. I am advised that the State Court Administrative Office is in the process of developing a joint information system through JIS that will allow the Circuit and Probate Courts to have a unified information system; however, it is not yet known when this system will be available to the Lapeer County Courts.

7. The physical files remain in the same location because of space constraints.


8. Further, all fees collected from proceeds handled in the Circuit Court's family division are processed by the staff assigned to the family division and are then transmitted to the County Clerk. The County Clerk is then responsible for transmitting these fees to the County Treasurer in compliance with MCL 600.571; MSA 27A.571 and MCL 600.1027; MSA 27A.1027.

9. Even without the assignment to undertake most of the clerical functions related to the operation of the new family division, the County Clerk and her deputies have had difficulty in meeting the needs of the Circuit Court during the

past year. Despite a request to the County Clerk to have a member of her staff in my courtroom at all times for non-family division Circuit Court work, this duty is often unfulfilled. For this reason, I am often required to mark my own exhibits and walk to the County Clerk's office to verbally give a deputy clerk an account of the proceedings so that they may be entered into the Circuit Court's information system.

10. I have reviewed Plaintiffs' Complaint for Writ of Superintending Control and supporting Brief and believe that the relief the Plaintiffs are seeking is inconsistent with the efficient and effective operation of the Circuit Court's family division. Until space requirements and funding issues are resolved with the County of Lapeer, the current local administrative order sets forth the best process to assure the efficient and effective operation of the family division of the Circuit Court.

11. Deponent further sayeth not.



Honorable Nick O. Holowka, Affiant
Chief Judge, Lapeer County Circuit Court

Dated: 3/15/2000

Family Division of the Circuit Court

Instructions for Completing and Filing the Implementation Plan

March 24, 1997

Introduction

Pursuant to 1996 PA 388, Section 1011(1), each circuit and probate chief judge must agree on a plan for the implementation and operation of the family court division of the circuit court by July 1, 1997. Supreme Court Administrative Order 1997-1 requires plans to be filed with the State Court Administrative Office, unless an extension is granted by the Supreme Court.

Format

Plans must follow the numerical listing of the required elements in the Section entitled "Plan Contents". Chief judges may include additional elements in plans that address local implementation issues, however these should appear subsequent to the elements required by AO 1997-1. Supporting documents deemed essential to understanding any aspect of the implementation plan may be included. However, the supporting documents should appear in an Appendix and be clearly referenced within the related plan element. Plans incorporating participation by district court judges should also be signed by the chief district court judge.

Due Date

Plans are due at the State Court Administrative Office by Monday, June 30, 1997, at 5:00 p.m. Plans should be mailed to:

State Court Administrative Office
P.O. Box 30048
Lansing, MI 48909-7548
ATTN: Deborah M. Marks

or hand-delivered to:

State Court Administrative Office
309 N. Washington Square
Lansing, MI
ATTN: Deborah M. Marks

A copy of the implementation plan must also be sent to the SCAO Regional Administrator.

Notification of Disagreement

In the event the chief circuit and probate judges are unable to agree on aspects of the plan requirements, either chief judge must notify the SCAO Regional Administrator of the impasse by June 1, 1997. Chief judges may also contact their Regional Administrator now for assistance in developing implementation plans.

Contact Person

Questions regarding plan format, inclusion of supporting documents, and the Family Court Division Task Force Report may be directed to:

State Court Administrative Office
P.O. Box 30048
Lansing, MI 48909-7548
ATTN: William Newhouse
Telephone (517) 373-4835.

Plan Amendment

After July 1, 1997, plans may be amended by submitting proposed amendments to the State Court Administrative Office prior to the effective date of the plan amendment. Plans and subsequent amendments shall not be effective prior to acceptance for filing by the State Court Administrative Office.

Cover Page and Plan Contents

Please use the cover sheet represented on page 4 to identify your court and the judges appearing as signatories to the plan. Plans incorporating participation by district court judges should also be signed by the chief district court judge.

The implementation plan must begin, as outlined on page 4 of this document, by identifying the

courts and judges involved in the plan. Plans will then address the elements described below. Plan requirements identify elements which must be included in all plans, and permit flexibility in the operation of the family court division based on the local environment. Guidelines may be addressed in plans, but are not required.

Chief judges should refer to the Family Court Implementation Task Force Report to the Supreme Court for additional discussion of each plan requirement or guideline.

- **IMPLEMENTATION PLANS MUST BE SUBMITTED USING THE FORMAT PROVIDED IN THIS DOCUMENT.**
- **NARRATIVE DESCRIPTION FOR EACH SECTION OF THE PLAN MUST BE INCLUDED.**
- **ATTACH ADDITIONAL PAGES TO DESCRIBE EACH SECTION, IF NECESSARY.**

I. Plan Requirements

A. Administration

1. State that the chief judge of the circuit court has supervisory authority over the administration of the family division of the circuit court.
2. Address all specific elements of administrative structure, e.g. - coordination of staff, clarification of supervisory responsibilities, facilities management, and the budget process.
 - Include an organizational chart for the family division.
3. If a multi-judge family division, provide for the appointment of a presiding judge of the family division, made by the chief circuit judge after consulting with the judges assigned to the family division.

B. Judicial and Case Assignment

1. Address the number of judges assigned to the family division.
 - a) Identify the methodology used.
 - b) Define the process of selection used to determine the number of judges assigned.
2. State that, where sufficient caseload and judicial resources exist, family division judges be assigned full-time to the division when practicable.
3. For courts with identified barriers to full immediate implementation of the family division, provide a schedule for full implementation.
 - a) Identify specific barriers that exist.
 - b) Identify proposed schedule frames for overcoming barriers.

C. Caseflow Management

1. State how cases will be assigned. Assignment of cases should comply with

MCR 8.111 - Assignment of Cases. Subrule 8.111(B) provides that initial case assignment be by lot "unless a different system has been adopted by local court administrative order under the provisions of subrule 8.112¹."

2. If case assignment is other than by lot, articulate objective criteria for alternative allocation of cases among family division judges. Alternative assignment plans shall be submitted through local administrative order pursuant to MCR 8.112.
3. Address transfer of cases to family division judges and provide for a transition from currently assigned judges.
 - Assign pending cases under the one judge/one family concept, when practicable.

D. Facilities and Records Management

1. Clearly define the process for filing court documents by the public and the bar.
2. Designate a central access point, applicable to all counties, to provide the public and bar with information regarding access to courts and court related activities, such as where to file documents, how records are stored, how records may be accessed, and the date and time of hearings.
3. Where there is a youth detention facility, indicate who is responsible for operation of the facility, and identify the position of facility manager within appropriate lines of authority.
 - Designate the facility manager in a flexible manner, in accordance with local needs.

¹ See MCR 8.112(B).

E. Training and Staff

1. Address the need for local training to be provided to family division staff, including cross-training of staff. Training shall focus on both general and specific family division requirements, including, but not limited to, confidentiality, access to records, and file management.

II. **Plan Guidelines**

A. Facilities and Records Management

1. Address internal transfer of files and documents, including development of electronic bridges and security of file materials and court personnel.
2. Provide for review of existing facilities to determine the best ways of meeting needs of families using the family division. Plans may provide that this review occur during any modification or construction of new facilities. The review should consider the following:
 - a) Places for child care during hearings or other meetings.
 - b) Places for supervised parenting time.
 - c) Places for attorney/client meetings.
 - d) Ways to limit danger to court employees, the public, and records.
 - e) Safe access to facilities during non-traditional hours.
 - f) Other.